

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 7385

BILL NUMBER: SB 418

DATE PREPARED: Apr 11, 2001

BILL AMENDED: Apr 10, 2001

SUBJECT: Retainage on Highway Projects.

FISCAL ANALYST: James Sperlik

PHONE NUMBER: 232-9866

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) Part (1) eliminates the requirement that a contractor must submit the written consent of the surety of the contractor's bond before the contractor may be permitted to draw any part of the retained percentage of a contract withheld by the Indiana Department of Transportation (INDOT). The bill repeals the requirement that, until there has been substantial completion of an Indiana Department of Transportation contract, payment on the contract may not exceed 97% of the estimated cost of the completed work. The bill also repeals additional provisions: (1) requiring that the retainage, upon the contractor's request, be deposited in an interest bearing escrow account with the Treasurer of State or the Treasurer of State's designee acting as escrow agent; and (2) permitting the Treasurer of State to charge a fee for these services.

Part (2) provides that public records relating to negotiations between the INDOT and landowners are excepted from disclosure if the records are created in anticipation of the negotiations or while the negotiations are in progress.

Part (3) provides that the INDOT may not give consent to openings in state route number 331 other than at the intersection of certain highways, and may not issue permission for a curb cut along state route number 331.

Part (4) requires the Toll Road Authority to use excess revenues for road and infrastructure projects in the counties through which the toll road passes. It specifies that the Authority's use of excess revenue to fund projects is subject to the trust indenture for bonds payable from the Authority's revenue. The bill requires the Authority to allocate money for the projects upon the basis that the population of each county bears to the total population of all the counties through which the Toll Road passes.

Effective Date: July 1, 2001.

Explanation of State Expenditures: (Revised) The INDOT reports that Part 1 of the bill will have no fiscal

impact on them.

Background: INDOT reports that under Indiana Code, the INDOT is required to withhold a 3% retainage on all contracts. Additionally, all contractors are required to post a performance bond with the INDOT on all contracts. Further, the INDOT reports that revised regulations require the contractors to pay their subcontractors within ten days after the work is completed. In addition, according to the INDOT, the contractors report that the revised regulations will have a huge impact on their operations and have asked the INDOT to eliminate the retainage provision.

Parts (2) and (3): The INDOT reports that these provisions will have no fiscal impact on them.

Explanation of State Revenues: (Revised) The State Treasurer's Annual Report for FY 2000 reveals that there was no escrow account established for the investment of the INDOT retainage amount. The report also reveals that there were no charges for the services of the State Treasurer for the investment of the INDOT retainage.

Part (4): Estimates of the excess revenues for the Toll Road are shown in the table, below, along with the estimated amount each county would have received had this provision been in effect for the last four fiscal years.

County	1998 Est. Population	% of Pop.	1997 Est. Excess Rev.	1998 Est. Excess Rev.	1999 Est. Excess Rev.	2000 Est. Excess Rev.
Lake	478,323	39.08	6,018,893	4,484,075	5,433,419	4,913,996
Porter	145,726	11.91	1,833,717	1,366,119	1,655,347	1,497,099
LaPorte	104,461	8.54	1,314,467	979,278	1,186,605	1,073,168
St. Joseph	258,088	21.09	3,247,605	2,419,466	2,931,701	2,651,437
Elkhart	172,310	14.08	2,168,233	1,615,333	1,957,323	1,770,207
La Grange	33,484	2.74	421,340	313,898	380,355	343,994
<u>Steuben</u>	<u>31,450</u>	<u>2.57</u>	<u>395,746</u>	<u>294,830</u>	<u>357,250</u>	<u>323,098</u>
Total	1,223,842	100.00	15,400,000	11,473,000	13,902,000	12,573,000

Background: Until 1998, Toll Road revenue in excess of operating costs and the major expense account (the capital budget account) were put into the Transportation Improvement Fund for projects that would benefit the Toll Road. Upon completion of a study of their long-term needs (which included improving some of its interchanges and adding lanes) and approval by the Indiana Department of Transportation and the Indiana Transportation Finance Authority, all excess revenue was put into a long-term construction fund and a moratorium was put on Transportation Improvement Fund projects until the long-term capital needs were funded.

Explanation of Local Expenditures:

Explanation of Local Revenues: See table above.

State Agencies Affected: Department of Transportation; State Treasurer; Transportation Finance Authority.

Local Agencies Affected: Counties through which the Toll Road passes.

Information Sources: Firooz Zandi, Acting Deputy Chief Engineer of the INDOT, 232-5518; State

Treasurer's Annual Report for FY 2000; Kathy Noland, Chief of Legislative and Public Affairs at the INDOT, 232-0694; Stephanie Rhinesmith of the Indiana Transportation Finance Authority, 233-6322.